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The Honorable Leonard D. Wexler  
United States District Court - Eastern District of New York  
Long Island Federal Courthouse  
944 Federal Plaza  
Central Islip, NY 11722

**Re: *Harper v. GEICO*, 09-CV-2254 (LDW)(ARL)**

Dear Judge Wexler:

Defendant respectfully requests leave to briefly respond to Plaintiff's supplemental citation of *Jason v. Falcon Data Com, Inc.*, 09-CV-03990 (JG)(ALC). ECF No. 53. We submit that *Jason* is distinguishable in several important respects.

1. In *Jason*, the court granted plaintiff's stage one motion for a collective action covering two locations, one in Brooklyn and the other in Nassau County. In this case, Plaintiff is seeking a nationwide collective action.
2. In *Jason*, the collective action includes one job classification, technician. Here, Plaintiff was employed during the limitations period only in the TCR II classification, however, she also seeks include a second job classification, TCR I, as to which she has no claim.
3. In *Jason*, the common question is whether the technicians were paid by commission. That issue can be resolved based on payroll records. Here, the question is whether Plaintiff exercised discretion and independent judgment. Documentary evidence did not eliminate disagreement about that issue. *See* ECF No. 46.

Sincerely,

SHAWE & ROSENTHAL, LLP

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Eric Hemmendinger

cc: All counsel via ECF